

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ARCHIE L. HENRY,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 3:13-cv-0824

Judge Sharp

ORDER

Before the court is Archie Henry's motion under 28 U.S.C. § 2255 to set aside, vacate and correct an allegedly illegal sentence imposed by this court on July 24, 2012. As explained in the Memorandum Opinion filed herewith, the court finds that the plaintiff is not entitled to relief on any of the grounds asserted *except* as to Claim 1: that his defense attorney failed to file a notice of appeal despite an unequivocal and timely request that he do so.

With regard to Claim 1, the Court finds that an evidentiary hearing is required to resolve the question of whether Mr. Henry expressly directed his defense counsel to file a notice of appeal after entry of judgment in August 2012.

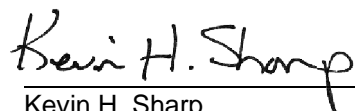
Accordingly, the Federal Public Defender's Office is **DIRECTED** to designate a member of the Federal Defender's Panel to represent Mr. Henry for purposes of the evidentiary hearing. New counsel for Mr. Henry shall promptly enter a notice of appearance.

The evidentiary hearing is set for Friday, July 25, 2014, at 10:30 a.m. Either party may move for a continuance if necessary.

However, Claims 2 through 6 (that counsel failed to investigate Henry's prior convictions; that counsel failed to argue at sentencing that his client did not brandish a gun and therefore should not be subject to an enhancement under § 2K2.1(b)(6)(B); that counsel's failure to ascertain the Criminal History Category prior to the plea rendered the plea not knowing and voluntary; that counsel failed to explain to his client that the plea would include facts outside the indictment and that he would be held responsible for facts not included in the indictment; and that counsel failed to argue that the United States should not

be permitted to use prior state convictions to enhance his penalties for a federal crime) are without merit and are hereby **DISMISSED**.

It is so **ORDERED**.

A handwritten signature in black ink that reads "Kevin H. Sharp". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Kevin H. Sharp
United States District Judge